

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

SPECIAL COUNSEL,
Petitioner,
v.
DEPARTMENT OF VETERANS
AFFAIRS,
Agency.

DOCKET NUMBER
CB1208930036-U-4

DATE: NOV 19 1993

Joseph E. Siegelman, Esquire, and Bruce D. Fong,
Esquire, San Francisco, California, for the
Special Counsel.

Maureen T. Regan, Esquire, Washington, D.C., for the
agency.

BEFORE

Ben L. Erdreich, Chairman
Jessica L. Parks, Vice Chairman
Antonio C. Amador, Member

OPINION AND ORDER

This case is before the Board on the request of the Office of Special Counsel (OSC) for a third extension of a stay under 5 U.S.C. § 1214(b)(1)(B).^{*} On June 8, 1993, the Board issued an Order under 5 U.S.C. § 1214(b)(1)(A)(i) staying the reassignment and removal of Mr. James Steen from his position as a GM-13 supervisory special agent with the Department of Veterans

^{*} All citations herein to 5 U.S.C. are to Supp. IV 1992.

Affairs, Office of Inspector General, Seattle, Washington. On July 23, 1993, the Board ordered that the terms of that Order be extended under 5 U.S.C. § 1214(b)(1)(B) for a period of 90 days. Subsequently, on October 20, 1993, the Board granted a 30-day extension of the stay.

On October 12, 1993, the agency provided OSC a written response declining to take the corrective action requested by OSC. On November 8, 1993, having exhausted the recommendation and correction procedures with the agency, as provided in 5 U.S.C. § 1214(b)(2)(A), OSC filed a petition for corrective action on Mr. Steen's behalf with the Board pursuant to 5 U.S.C. § 1214(b)(2)(B). *Special Counsel v. Department of Veterans Affairs*, MSPB Docket No. CB1215940005-T-1. On the same day, the Special Counsel petitioned the Board for an Order further extending the stay of Mr. Steen's reassignment and removal "until the Petition is resolved by the Board."

By Order dated October 20, 1993, the Board allowed the Department of Veterans Affairs until November 15, 1993, to respond to the Special Counsel's petition. No response has been received.

The Board may extend the period of a stay "for any period which the Board considers appropriate." 5 U.S.C. § 1214(b)(1)(B). The indefinite stay requested by OSC in this case appears to be appropriate. Congress intended

that stays be used to maintain the status quo while the dispute is being resolved in administrative actions before the Board. The House Report accompanying H.R. 25 states:

[S]tays are an effective means of minimizing the adverse consequences of a prohibited personnel practice, of providing time for a full investigation and for the settlement of controversies, and of safeguarding the status quo while interested parties prepare their cases for presentation to the MSPB.

H. Rep. No. 274, 100th Cong., 1st Sess. 23 (1987) (accompanying H.R. 25) (emphasis added). In addition, the evidentiary record remains unchanged. We find that there is therefore no basis for changing the Board's previous determination that the prohibited personnel practice claim is not clearly unreasonable.

Having considered the matter, the Board finds that an indefinite stay is appropriate under 5 U.S.C. § 1214(b)(1)(B). Accordingly, it is hereby ORDERED that the 30-day stay granted by the Board on October 20, 1993, is hereby extended indefinitely. It is further ORDERED that:

(1) The terms and conditions of the stay issued on June 8, 1993, are extended indefinitely; and

(2) Within 5 work y days of this Order, the agency shall submit a verified report to the Board explaining

the facts and circumstances surrounding compliance with
this Order.

FOR THE BOARD:

Washington, D.C.

for Matthew Shamm
Robert E. Taylor
Clerk of the Board